

November 5 2009

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

09-0614

Lawrence F. Roedel
 AO# 2110712
 Crossroads Correctional Center
 75 Heath Road
 Shelby, Montana 59474

FILED

NOV - 5 2009

IN THE MONTANA SUPREME COURT

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

LAWRENCE F. ROEDEL,

Appellant, Petitioner,

vs.

STATE OF MONTANA,

Respondent.

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW, Lawrence Roedel, the Petitioner in the above mentioned cause.

The Petitioner brings this motion before the Court in order to request appointment of appellate counsel to represent him in an appeal for Post-Conviction Relief.

STATEMENT OF THE FACTS

On May 11, 2006, the Petitioner was convicted of Deliberate Homicide and sentenced to ninety (90) years in prison with an additional ten (10) years to run consecutive for the use of a weapon. Immediately after sentencing, the Petitioner's attorney, Jack Quattman, left the case. The Petitioner was then appointed an appellate attorney, Joslyn Hunt, who appealed his conviction to the Montana Supreme Court, and on November 11, 2007, the Court denied his appeal. At this time, the Petitioner's attorney, Ms. Hunt, withdrew from his case. The Petitioner is now left with no legal representation with which to pursue a further appeal nor the financial means to procure a new attorney.

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SUMMARY OF THE ARGUMENT

Because serious Constitutional issues are involved in this case, and since the Petitioner is unable to afford an attorney and is in desperate need of one, the Petitioner believes that the State of Montana has an obligation to replace the court-appointed attorney who recently withdrew from his case so he can pursue Post-Conviction Relief.

ARGUMENT

It is quite clear that under both State and Federal Law, an individual who is in jeopardy of losing a "fundamentally protected right", is entitled to counsel. Crumley v. Snead, 620 F.2d 481, 483 N.9 (5th Cir. 1980); U.S. ex rel Darcy v. Superintendent of County Prisons, 111 F.2d 409, 411 (3rd Cir. 1940), cert. denied, 311 U.S. 662 61 S.Ct. 19, 85 L.Ed. 425 (1940); United States Code title 28, section 1915 (d).

It is abundantly clear that the Petitioner herein has an established right to a fair and impartial hearing on the merits of the case before this Court. Crumley, Supra.

There is a clear precedent within the United States that an accused has the right to be represented by an attorney at all stages of a proceeding against him. William v. Kaiser, 323 U.S. 471, 65 S.Ct. 363.

The counsel provision of the Sixth Amendment is made applicable to the states, by and through the 14th Amendment of the United States Constitution.

Wherefor, the Petitioner states that he is a citizen of the United States, and the state of Montana, and therefore the Petitioner has a right to counsel under such provisions.

The Montana Supreme Court held in State v. Garner, 306 Mont. 462 _____ P.3d _____ (2001), "A defendant's right to counsel arises **at every** critical stage of the proceedings against him. Coleman v. Alabama, (1970), 399 U.S. 1,

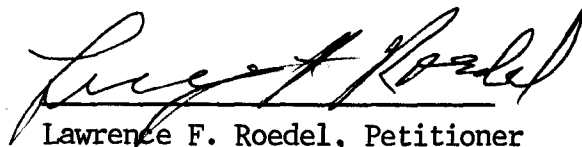
1 7, 90 S.Ct. 1999, 26 L.Ed.2d. 387; United States v. Wadsworth, (9th Cir.
2 1987) 830 F.2d 1500, 1510. In State v. Finley, (1996), 287 Mont. 126, 144-45,
3 915 P.2d 208, 220, overruled on other grounds by State v. Gallagher, 2001 MT
4 39, 304 Mont. 215, 19 P.3d 817, the Court Defined a "critical stage" as "any
5 step of the proceeding where there is potential substantial prejudice to the
6 defendant." Finley involved a post-trial hearing to determine whether Finley's
7 complaints against his counsel were "substantial." Finley, 276 Mont. at 131-
8 32 915 P.2d at 212.

9 It cannot be said that the proceeding before the Court (Post-Conviction
10 Relief) is not to be considered a critical stage of the proceedings.
11 Furthermore, the Petitioner is eligible, through the Montana Public Defenders
12 Act, (MPDA under section 47-1-104(4)(a)(v), MCA), for a state-appointed
13 attorney. The Petitioner qualifies because he is within the appeal time
14 limitation of thirty (30) days from the date of final ruling which was
15 October 9, 2009.

16 CONCLUSION

17 For these reasons, the Petitioner respectfully requests that this Court
18 appoint him counsel to represent him in Post-Conviction Relief proceedings.

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20 DATED this 21 day of October, 2009.

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23 Lawrence F. Roedel, Petitioner